

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2607 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI M PARMAR

Versus

A M C

Appearance:

MR MK VAKHARIA for Petitioners
MR PRASHANT G DESAI with MR MRUGAN PUROHIT for Respondent
No. 1 and 2
None present for Respondent No. 3
MR AJ PATEL for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/04/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioners prayed for following reliefs in the special civil application:

- (A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted declaring T.P. Scheme No.28 (Nava Vadaj) of Ahmedabad Municipal Corporation as improper, illegal and invalid and to give appropriate directions to the respondents, their agents and servants, not to implement the said T.P. Scheme No. 28, Nava Vadaj.
- (B) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the T.P. Scheme No. 28 Nava Vadaj in so far as resolves or decides to acquire the rooms occupied by the petitioners for the purpose of T.P. Road connecting Ashram Road with Ranip passing through the lands of final plot NO. 706, 717, 79 and 720 and not to evict the petitioners from their rooms in question which are located on the final plots NO. 706, 717, 719 and 720.
- (C) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the notice annexure -E dated 5th June, 1987.
- (D) Pending admission and final hearing of this petition, an interim injunction restraining the respondents, their agents and servants from evicting the petitioners from their respective rooms over the land of final plot No.706, 717, 719 and 720 of T.P. Scheme No. 28, may kindly be granted.
- (E) Pending admission and the final hearing of this petition, an interim injunction restraining the respondents, their agents and servants from taking any action of evicting the petitioners in pursuance of the notice dated 5th June, 1987 annexure-E, may kindly be granted.
- (F) Any other appropriate relief as the nature and circumstances of the case requires may kindly be granted.

3. During the course of arguments, learned counsel

for the petitioners fairly admitted that the petitioners are there on the land in dispute on the basis of lease and licence of Harijan Ashram, Ahmedabad. It is true that in the special civil application, the petitioners also have come up with the case that they have tenancy rights in the land in dispute through Gandhi Ashram /Harijan Ashram, Ahmedabad but during the course of arguments, this point has not been pressed.

4. From the document at page No.51 on the record of the special civil application, I find that in lieu of the land of Gandhi Ashram/ Harijan Ashram in T.P. Scheme, final plot No. 706 was given to Gandhi Ashram/Harijan Ashram. The land on which the structure, in occupation of the petitioners, is standing has been marked for the T.P. Road connecting Ashram Road with Ranip. On finalisation of the T.P. Scheme and giving of final plot to Gandhi Ashram/Harijan Ashram the petitioners have no right, title and interest in the land in dispute which they are claiming through Gandhi Ashram/Harijan Ashram. They can enforce their alleged right against Gandhi/Harijan Ashram but on this contention they cannot justify their retention of this land in dispute. It is unfortunate that for all these years, the petitioners have kept away this scheme from implementation and the road could not be constructed. It may be a hard case but hard case cannot be made a ground to lay down a wrong law. Once in the scheme the plot has been given to the persons through whom the petitioners are claiming the right in disputed land they cannot be allowed to continue at the disputed place which is admittedly not the part of final plot No.706 of the Gandhi Ashram/Harijan Ashram. None of the legal or fundamental right of the petitioners is being infringed. On the contrary, the petitioners are taking undue advantage of the situation. Rather than to approach to the Gandhi Ashram/Harijan Ashram to get the land from the plot allotted to the said Ashram they have come up before this court. It is not in dispute that public notices were given and the Ashram people were heard before finalising the T.P. Scheme. The claim of the petitioners for alternate land to be allotted to them by the Corporation is wholly misconceived and misplaced. It is understandable that in case where Gandhi Ashram/Harijan Ashram would not have been given any plot in the T.P. Scheme then there may be some justification in this claim of the petitioners but not where admittedly the land has been given to the Ashram in the T.P. Scheme.

5. In the result, this special civil application fails and the same is dismissed. Rule discharged.

Interim relief if any, granted by this court stands
vacated. No order as to costs.

zgs/-